

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

D MCCALL,

Plaintiff,

vs.

Case No:

WAGNER EQUIPMENT CO., a Foreign  
For-Profit Corporation,

Defendant.

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant Wagner Equipment Company (“Wagner”), by its attorneys, hereby removes the above-captioned action to the United States District Court for the District of New Mexico, under 28 U.S.C. §§ 1332, 1441, and 1446. This action was formerly pending in Second Judicial District Court, County of Bernalillo, State of New Mexico, as Case No. D-202-CV-2021-03697. Wagner states the following grounds in support of the removal of this action.

**A. Satisfaction of Procedural Requirements for Removal**

1. Plaintiff Midway Leasing (“Midway”) filed its Complaint for Damages in New Mexico’s Second Judicial District Court on June 16, 2021. *See* Complaint, attached as Exhibit A. Wagner’s counsel agreed to accept service of the Complaint effective June 30, 2021. *See* Acceptance of Service, attached as Exhibit D. Wagner is providing this Notice of Removal within 30 days of service. Removal of this action is therefore timely. *See* 28 U.S.C. § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 347-48 (U.S. 1999).

2. Venue is proper in this Court under 28 U.S.C. § 1441(a), because the District of New Mexico is the district embracing the place where the state court action is pending.

3. In accordance with 28 U.S.C. § 1446(d), Wagner will serve a copy of this Notice of Removal on counsel for McCall and will file a copy with the Court Clerk for the Second Judicial District Court, County of Bernalillo, State of New Mexico.

4. In accordance with D.N.M.LR-Civ. 81.1, Wagner is filing herewith legible copies of all records and proceedings from the state court action. *See* Complaint, attached as Exhibit A; Certificate of Arbitration, attached as Exhibit B; Jury Demand, attached as Exhibit C: and Acceptance of Service, attached as Exhibit D.

#### **B. Basis for Diversity Jurisdiction**

5. Under 28 U.S.C. § 1332(a), federal district courts have subject matter jurisdiction over actions where there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

6. Wagner and McCall are citizens of different states. McCall is domiciled in New Mexico. Wagner is a corporation formed under the laws of the State of Colorado, and it maintains its principal place of business in Colorado.

7. McCall has asserted a claim for damages which exceeds \$75,000. McCall maintains that he is entitled to damages relating to an alleged commission of 1% of the sale price of certain real property. *See* Complaint, attached as Exhibit A, at ¶ 12. Wagner has knowledge that the sale price of the transaction was \$11 million. 1% of \$11,000,000 is \$110,000. Hence, the amount in controversy in this case is far greater than \$75,000.

WHEREFORE Wagner hereby removes this action from the Second Judicial District Court, County of Bernalillo, for the State of New Mexico, to the United States District Court for the District of New Mexico.

Respectfully submitted,

RMH Lawyers, P.A.

By: /s/ Elizabeth A. Heaphy

Robert J. Muehlenweg  
Elizabeth A. Heaphy  
316 Osuna Rd. NE, Unit 201  
Albuquerque, NM 87107  
(505) 247-8860

[rjm@rmhlawyers.com](mailto:rjm@rmhlawyers.com)

[eah@rmhlawyers.com](mailto:eah@rmhlawyers.com)

*Attorneys for Wagner Equipment Company*

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of July, 2021, I filed the foregoing *Notice of Removal* electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Alexandra W. Jones  
Jones Law Firm, LLC  
1101 Lomas Blvd. NW  
Albuquerque, NM 87102

/s/Elizabeth A. Heaphy

Elizabeth A. Heaphy